

AMERICAN ARBITRATION ASSOCIATION

CASE NO.: 01-15-003-1595

In the Matter of Arbitration Between

CITY OF PHILADELPHIA

Employer

and

FRATERNAL ORDER OF POLICE,  
LODGE NO. 5

Union

OPINION  
AND  
AWARD

ARBITRATOR:

Robert E. Light, mutually chosen  
by the parties

HEARING:

November 17, 2015 in Philadelphia, PA

APPEARANCES:

For the Employer

Diane A. Loebell, Esq., Senior Attorney  
Captain Gregory Malkowski, Labor Relations

For the Union

Marc L. Gelman, Esq.  
(Jennings Sigmond, PC)  
Britton Brown, Grievant  
John McGrody, FOP

ISSUES:

Was there just cause for the five-day suspension  
imposed on Officer Brown? If not, what shall be  
the remedy?

## **BACKGROUND**

A hearing in this matter was held in Philadelphia, Pennsylvania on November 17, 2015, with both sides present and duly represented by counsel and with both parties afforded full and complete opportunity to offer evidence and argument in support of their respective contentions. In lieu of filing post-hearing briefs, both counsel decided to sum-up orally at the hearing, after which time the hearing was declared closed.

The City of Philadelphia (hereinafter the "City" or the "Employer") and Fraternal Order of Police, Lodge No. 5 (hereinafter the "FOP" or the "Union") are signatories to a current collective bargaining agreement. A grievance was filed by the FOP on behalf of Officer Britton Brown, specifically, it was alleged that Officer Brown was suspended for five days without just cause. The matter proceeded through the course of the grievance procedure and when there was no resolution it was submitted to arbitration under the auspices of the American Arbitration Association, from whose panel of arbitrators the undersigned was duly chosen.

## **FACTS**

Officer Britton Brown is employed as such by the City of Philadelphia and has been so employed for approximately eight years. At the time of the incident in question, Police Officer Brown worked in the 35<sup>th</sup> District. An incident occurred on March 10, 2014 involving the grievant and Sergeant K [REDACTED] S [REDACTED]. As I understand the facts, at the time of the incident, the grievant had been working in the District in question for approximately one or two months. Sergeant S [REDACTED] wanted to meet with the grievant on or about March 10, 2014. Officer Brown's partner was Officer A [REDACTED] L [REDACTED] and the grievant wished to have Officer L [REDACTED] present when he met with Sergeant S [REDACTED]. At some point in time, Sergeant S [REDACTED] entered the roll call room and told Officer L [REDACTED] to leave the room. The grievant testified that, at that point in

time, he became concerned and that without a witness present he would be without a means to offer any defense in the event of false accusations, according to the grievant, as to his conduct or demeanor. In the memorandum which he wrote to the Commanding Officer of the 35<sup>th</sup> District, the grievant said, "I stated that without an impartial witness, no meeting will take place. I quickly left the room to protect both my physical safety and to keep myself in full view of other personnel to safe guard against accusations." The grievant then left the room.

Sergeant S [REDACTED] testified at the hearing that the grievant disobeyed his direct order and that Officer Brown "angrily" left the room. Officer Brown was taken to the hospital and, in addition, Sergeant S [REDACTED] testified that the grievant never told him that he wanted an FOP representative present. Sergeant S [REDACTED] viewed what the grievant did as disobeying a direct order of a supervisor. Of course, the grievant testified that he did not do so, but that he simply wanted a disinterested party to be present in case there was any discipline to be imposed. In fact, according to the grievant, he was never told what the subject of the meeting was to be. Officer Brown wrote a detailed memorandum dated March 10, 2014 (Union Exhibit No. 8) which details his version of what occurred on that day.

### **POSITION OF THE CITY**

The City takes the position that what occurred here was a clear case of insubordination, namely the failure to obey a proper order of a supervisor. It cites the decision of the Board of Inquiry (PBI) which found the grievant guilty and recommended a penalty of a reprimand. It was pointed out at the hearing that, in fact, the minimum penalty involved in what the City alleged to have occurred here was five days. In any event, the City imposed a five-day penalty (suspension).



The City maintains that it properly imposed the five-day suspension upon Officer Brown and that it should not be disturbed by this arbitrator. It cites the facts as the City understands them to be and that, in its view, what occurred here was a clear case of insubordination and it requests that the arbitrator so find and that the five-day suspension should not be disturbed. It asks that the grievance be denied.

### **POSITION OF THE FOP**

The FOP, on the other hand, takes the position that this is a long service employee who has had a clean record and that what occurred on the day in question was not an "offense" for which discipline should have been imposed. In fact, the FOP argues that there was no insubordination and that the grievant never said that he was disobeying a direct order of a supervisor and that all that is involved here is a mistake made by an unsophisticated individual, namely the grievant. It argues that the grievant believed that the meeting was to be disciplinary in nature and that it was for that reason that he wished to have Officer L [REDACTED] present. While the grievant may have been "unsophisticated" in his discussion with the Sergeant respecting what he wished, was to have a union representative present and he was simply asserting his Weingarten rights. It asks that the grievance be sustained and that the discipline be expunged from the record of Officer Brown and that he be made whole.

### **DISCUSSION**

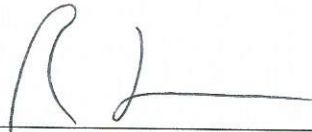
The arbitrator has carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearing, the arguments of respective counsel, the contract, and the exhibits prior to reaching his decision. It is axiomatic in the field of labor relations that supervisors must be accorded certain respect and dignity or else chaos, not reason, would be the

rule. This is especially so where, as here, we are dealing with what may be characterized as a quasi-military operation. Certainly, respect for supervision must be the rule. In that regard, if this arbitrator was convinced that the grievant was insubordinate, he would certainly uphold the disciplinary action that was imposed. In reality, however, in the opinion of this arbitrator, the Sergeant simply over-reacted to what was a situation for which a reasonable and plausible explanation was evident. Put another way, I do believe that this grievant was "alarmed" by the situation and that he simply wished to have a witness (or Union representative) present while he was having an exchange with his Sergeant. As the grievant explained, without an impartial witness he felt that his side of the story would not be adequately presented and that it was needed to safeguard against any false accusations against him. While the grievant chose perhaps not the best way to achieve that goal, my observation of him at the hearing was clearly that of an individual who was remorseful and had "learned his lesson." Further, as respects the testimony of both witnesses, this arbitrator finds that the grievant never stated to the Sergeant that "I am not obeying your direct order." Further, what is puzzling to this arbitrator was why the grievant would have a written evaluation made by the Sergeant since he had only been in his position for a short period of time. In sum, this arbitrator finds that, based upon the facts of this case, even the PBI recommendation of a reprimand should not have been issued, much less a five-day suspension. That being so, the arbitrator finds that there was not just cause for any discipline and that the discipline imposed should be rescinded, and that the grievant should be made whole.

Therefore, the undersigned having duly heard all of the proofs and allegations of the parties to this proceeding makes the following award:

**AWARD**

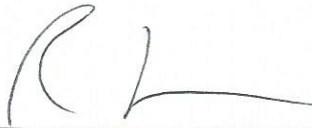
The five-day disciplinary suspension imposed upon Officer Brown was not for just cause. It shall be rescinded and the grievant shall be made whole, with his personnel file to reflect that fact. Grievance granted.



**ROBERT E. LIGHT, ARBITRATOR**

**AFFIRMATION**

I, Robert E. Light, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Opinion and Award.



Robert E. Light, Arbitrator

Dated: June 21, 2016